

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 REBECCA A. SPRAITZAR,

3
4 Petitioner,

5 v.

6 ISLAND COUNTY,

7
8 Respondent.
9

Case No. 08-2-0023

**ORDER ON PETITIONERS' MOTION
FOR RECONSIDERATION**

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11 THIS Matter comes before the Board upon Petitioner's Motion for Reconsideration of the
12 Board's November 10, 2008 Final Decision and Order (FDO).¹ Island County opposes the
13 Motion.²
14

15 **DISCUSSION**

16 A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832.
17 WAC 242-02-832(2) provides that a motion for reconsideration must be based on at least
18 one of the following grounds:
19

- 20 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking
21 reconsideration;
22 (b) Irregularity in the hearing before the board by which such party was prevented from
23 having a fair hearing; or
24 (c) Clerical mistakes in the final decision and order.

25 Petitioner does not specify which provision of WAC 242-02-832(2) is applicable to her
26 motion. She does not assert any irregularity occurred during the hearing nor that there
27 were clerical mistakes in the FDO. Instead, her motion appears to be based on an assertion
28 that the Board misinterpreted the law.
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32 ¹Petitioner's Motion for Reconsideration, filed November 20, 2008.

²Island County's Response to the Motion for Reconsideration, filed November 26, 2008.

1 In the Board's November 10, 2008 FDO, we concluded that Petitioner had not demonstrated
2 that the County violated the provisions of RCW 36.70A.140 as alleged in the Petition for
3 Review.³ The Board noted that, while RCW 36.70A.140 establishes the requirement that
4 local jurisdictions adopt public participation programs that provide for early and continuous
5 public participation, Petitioner had not raised any challenges to the County's failure to
6 establish a public participation program, the features of the County's public participation
7 program, or the County's failure to follow its own program. Instead, she focused on the
8 content of the notices issued pursuant to that program. However, it is RCW 36.70A.035
9 that requires the county to establish notice procedures that are reasonably calculated to
10 provide notice to property owners and other affected individuals and entities and she did not
11 allege a violation of that section of the GMA.⁴
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14 The Board noted that WAC 242-02-210 sets forth the requirements that must be contained
15 in a petition for review. Subsection (2)(c) requires:

16 A detailed statement of the issues presented for resolution by the board that
17 specifies the provision of the act or other statute allegedly being violated and, if
18 applicable, the provision of the document that is being appealed;
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20 The Board held that this rule would be rendered meaningless were Petitioner permitted to
21 pursue an appeal based upon an alleged violation of a section of the GMA not specified in
22 the Petition for Review.⁵
23

24 In her motion, Petitioner requests reconsideration "based on the understanding that RCW
25 36.70A.140 is inclusive of the GMA requirements for effective public notification for early
26 and continuous public participation."⁶ Petitioner does not present any authority to support
27 this position, or to demonstrate why the Board's distinction between the requirements of
28 RCW 36.70A.035 as opposed to RCW 36.70A.140 was erroneously drawn. In response,
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31 ³ Final Decision and Order at 9.

32 ⁴ Id. at 6-7

⁵ Id. at 8.

⁶ Motion for Reconsideration at 1-2.

1 the County argues that the Petitioner brought a very narrow challenge and the Board
2 properly determined that she failed to establish that the County violated RCW 36.70A.140.⁷

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4 **ORDER**

5 Having reviewed Petitioner's Motion for Reconsideration and the County's Response, the
6 relevant provisions of the GMA and the Board's Rules of Practice and Procedure, in
7 particular WAC 242-02-832(2), the Board finds that Petitioner has failed to provide a basis
8 that compels reconsideration of the Final Decision and Order. Therefore, for the reasons
9 set forth above, Petitioner's Motion for Reconsideration is hereby DENIED.
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11 SO ORDERED this 3rd day of December, 2008.
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14 _____
15 James McNamara, Board Member
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17 _____
18 William Roehl, Board Member
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20 Board Member Gadbow dissented from the majority opinion on the November 10, 2008
21 Final Decision and Order and therefore did not participate in consideration of this Motion for
22 Reconsideration.
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24 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

25 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal the**
26 **decision to superior court as provided by RCW 36.70A.300(5). Proceedings for**
27 **judicial review may be instituted by filing a petition in superior court according to the**
28 **procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil**
29 **Enforcement. The petition for judicial review of this Order shall be filed with the**
30 **appropriate court and served on the Board, the Office of the Attorney General, and all**
31 **parties within thirty days after service of the final order, as provided in RCW**
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⁷ Island County's Response, at 1.
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1 34.05.542. Service on the Board may be accomplished in person or by mail, but
2 service on the Board means actual receipt of the document at the Board office within
3 thirty days after service of the final order. A petition for judicial review may not be
4 served on the Board by fax or by electronic mail.

5 Service. This Order was served on you the day it was deposited in the United States
6 mail. RCW 34.05.010(19).
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